



City of Wheatland

111 Main Street – Wheatland, California 95692
Tel (530) 633-2761 – Fax (530) 633-9102

CITY COUNCIL MEETING STAFF REPORT

Date: February 9, 2010

Agenda Item:

Subject: Business License Ordinance Update

Prepared by: Stephen L. Wright, City Manager

Recommendation: Council introduce for first reading the attached ordinance amending the Wheatland Municipal Code Chapter 5.04 concerning the business license program fee and application process.

Discussion: Attached for Council consideration is a proposed ordinance which amends existing City policy related to the City's business license program. Recent court rulings provide that City policies must reflect in greater detail the type of analysis that will be performed by staff in the license review. Also attached is the "markup" version that shows the actual changes that the City Attorney has included.

Before the Council can consider any changes to the City's business license fee structure, City staff must prepare a Cost of Services fee study to justify any adjustments pursuant to the ordinance (see attached email from the City Attorney). That analysis is currently underway and should be complete for consideration at the time of second reading of this ordinance. Any adjustments to the current fee will require a separate action by the Council. Adopting this ordinance does not change license fees.

Alternatives: The Council could take no action or could recommended modifications to the proposed ordinance.

Fiscal Impact: None.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND
AMENDING WHEATLAND MUNICIPAL CODE CHAPTER 5.04
CONCERNING BUSINESS LICENSE PROGRAM FEE
AND APPLICATION PROCESS**

The City Council of the City of Wheatland does ordain as follows:

SECTION 1. Purpose and Authority. The purposes of this ordinance are to authorize the City to levy and collect a business license program fee and to revise the business license application process. This ordinance is adopted pursuant to California Constitution article 11, section 7 and other applicable law.

SECTION 2. Amendment. Wheatland Municipal Code section 5.04.150 is hereby adopted to read as follows:

5.04.150 Application procedures.

A. A person required to have a license under this chapter shall file a written application with the collector upon a form prescribed by the collector.

B. The application shall contain:

1. The name of the applicant and, if different, name of business;
2. The type of business to be licensed;
3. The place where the business is to be carried on;

and

4. Such other information as the collector prescribes.

C. Investigation. Upon receipt of an application for a license hereunder, the collector shall refer such application to an appropriate city agency or staff member for investigation in order to review and confirm zoning compliance, verify the application pursuant to section 5.04.170, and determine whether the business is lawful and whether the business may pose a danger to the public health, safety or welfare. The city agency or staff member charged with the duty of making the investigation or inspection shall make a report thereon, favorable or otherwise, within ten days thereof. All investigations shall be made by a city agency or staff member designated by the city manager. The city also may undertake a similar investigation upon the renewal or transfer of a license.

D. The collector shall issue the license unless he or she determines, based on the application and investigation, that the application contains false statements, the business would not comply with applicable zoning requirements, the business would be unlawful, the business may pose an unreasonable danger to the public health, safety or welfare, or the applicant has failed to pay the business license program fee.

SECTION 3. Fee Authorized. Section 5.04.185 is hereby added to the Wheatland Municipal Code to read as follows:

5.04.185 Business License Program Fee.

There is hereby adopted a city business license program fee. The purpose of the fee is to fund the city business license program, which includes the review, investigation and verification of business license applications, renewals and transfers, enforcement of zoning compliance through the program, and administration and enforcement to ensure businesses are complying with the program and to investigate and respond to complaints relating to the program. The fee shall be in an amount established from time to time by resolution of the city council. Every applicant and licensee shall pay the fee. For a new application, the one-time fee shall be due and payable when submitting the application. For a renewal, the annual fee shall be levied, collected and paid with the annual business license tax. The fee is nonrefundable.

SECTION 4. This ordinance shall take effect 30 days after its final passage.

SECTION 5. Within 15 days from the date of passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the City.

INTRODUCED by the City Council on the ____ day of _____ 2010.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the ____ day of _____ 2010 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Enita Elphick, Mayor

Attest:

Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. _____, which ordinance was duly introduced, adopted and posted pursuant to law.

Lisa J. Thomason, City Clerk

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Deleted: 4

Deleted: The date of the expiration of the license;

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Deleted: or permit

Deleted: and/or inspection

Deleted: and/or inspections

Deleted: mayor

Deleted: No license shall be issued under this chapter unless the collector has received a favorable report, signed by the mayor of the city, from the appropriate city agency or staff member.

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ABSENT:

Enita Elphick, Mayor

Attest:

Lisa J. Thomason, City Clerk

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Lisa J. Thomason, City Clerk

Steve Wright

From: Richard P. Shanahan [RPS@bkslawfirm.com]
Sent: Wednesday, December 30, 2009 1:23 PM
To: swright@wheatland.ca.gov
Cc: Rex Miller; Lisa Thomason
Subject: RE: Wheatland- Business License Program Fee
Attachments: O123009rps.doc

Steve:

I have prepared a proposed ordinance. See the attached.

Since I wrote my 12/4/09 e-mail, I learned of a significant new case, *Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022 that is relevant to the city's proposed business license fee. *Weisblat* involves a San Diego fee adopted for the purpose of recovering the cost of collecting and administering the city rental unit business tax. A taxpayer challenged the fee as an unlawful tax that had not been voter approved and the court agreed. The court struck down the San Diego fee because its only purpose was to fund the collection of the tax and because the city failed to identify any regulatory activity or municipal service that would be funded by the fee. Under *Weisblat*, a fee limited to the cost of collecting a tax would not be lawful. Rather, it is important for the city to describe a broader range of regulatory activities to be funded by the fee and for the city fee study to incorporate those activities and their costs.

I drafted the proposed ordinance in an effort to satisfy the analysis in *Weisblat*. You will note that I also propose amending and expanding the provision of the business license chapter relating to the investigation of business license applications. City staff also should review the application procedures in the Code to ensure that it comports with actual practices and, if not, to make appropriate changes.

If the City Council adopts the ordinance to authorize the fee, the next step would be for the city staff to prepare a cost of service fee study to evaluate, calculate and substantiate the recommended fee amount. The study should describe and incorporate the services described in section 5.04.185 of the proposed ordinance.

Currently, the business license tax is \$35 per business per year and the fee is proposed at higher amounts of \$180 for a new application and \$41 for a renewal. With the fee being higher than the underlying tax, the fee will be viewed as suspect. *Weisblat* provides compelling authority to challenge the fee. It therefore will be important for the city to develop a thorough and defensible cost of service study in order to substantiate the fee.

Please contact me if you have any questions.

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2/2/2010